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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,884	08/06/2001	Gregory J. Mesaros	GEDP101USE	9136
23623	7590	07/21/2011		
TUROCY & WATSON, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114			EXAMINER  FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	
			NOTIFICATION DATE	DELIVERY MODE
			07/21/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet1@thepatentattorneys.com  
hholmes@thepatentattorneys.com  
swati@thepatentattorneys.com

**Office Action Summary****Application No.**

09/922,884

**Applicant(s)**

MESAROS, GREGORY J.

**Examiner**

MARK FADOK

**Art Unit**

3625

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 77-193 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 77-193 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG-06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **Species Restriction**

This application contains claims directed to the following patentably distinct species.

IA – 77,78,79,133,134,136

IB – 77,78,80,133,134

IC – 77,78,81,133,134,137

ID – 77,78,82,133,134,137

IE – 77,78,83,133,134

IF – 77,78,84,133,134

IG – 77,78,85,133,134,139

IH – 77,78,86,87,122,133,134,140,141

IJ – 77,78,86,88,122,133,134,140,141,185,186,188

IK – 77,78,86,89,122,133,134,140,142,185,186,189

IL – 77,78,86,87,123,133,134,140,141

IM – 77,78,86,88,123,133,134,140,141,185,186,188

IN – 77,78,86,89,123,133,134,140,142,185,186,189

IO – 77,78,86,87,124,133,134,140,141

IP – 77,78,86,88,124,133,134,140,141,185,186,188

IQ – 77,78,86,89,124,133,134,140,142,185,186,189

IR – 77,78,86,87,125,133,134,140,141  
IS – 77,78,86,88,125,133,134,140,141,185,186,188  
IT – 77,78,86,89,125,133,134,140,142,185,186,189  
IU – 77,78,86,87,126,133,134,140,141  
IR – 77,78,86,88,126,133,134,140,141,185,186,188  
IS – 77,78,86,89,126,133,134,140,142,185,186,189  
IT – 77,78,86,87,127,133,134,140,141  
IU – 77,78,86,88,127,133,134,140,141,185,186,188  
IV – 77,78,86,89,128,133,134,140,142,185,186,189  
IW – 77,78,86,87,129,133,134,140,141  
IX – 77,78,86,88,129,133,134,140,141,185,186,188  
IY – 77,78,86,89,129,133,134,140,142,185,186,189  
IZ – 77,78,86,87,130,133,134,140,141  
IAA – 77,78,86,88,130,133,134,140,141,185,186,188  
IAB – 77,78,86,89,130,129,133,134,140,142,185,186,189  
IAC – 77,78,90,91,92,133,134,,143,144,145  
IAD – 77,78,90,91,93,133,134,,143,144,146  
IAE – 77,78,90,91,94,133,134,,143,144,147  
IAF – 77,78,90,91,95,133,134,,143,144,148  
IAG – 77,78,90,91,96,133,134,,143,144,149  
IAH – 77,78,90,91,97,133,134,,143,144,150  
IAJ – 77,78,90,91,98,133,134,,143,144,151

IAK – 77,78,90,91,99,133,134,,143,144,152  
IAL – 77,78,90,91,100,133,134,,143,144,153  
IAM – 77,78,90,91,101,133,134,,143,144,155  
IAN – 77,102,103,133,156,157  
IAO – 77,102,104,133,156,158  
IAP – 77,105,133,159  
IAQ – 77,106,107,133,160,161  
IAR – 77,106,108,109  
IAS – 77,110,111,133,162,161  
IAT – 77,110,112,133,162,164  
IAU – 77,110,113,133,162,165,166,167  
IAV – 77,114,133,168  
IAW – 77,115,133,168,169  
IAX – 77,116,133,168,170  
IAY – 77,117,133,168,171  
IAZ – 77,118,133,172,173  
IBA – 77,119,133,172,174  
IBB – 77,120,133,172,175  
IBC – 77,121,133,172,175  
IBD – 77,122,133,176  
IBE – 77,123,133,177  
IBF – 77,124,133,178

IBG – 77,124,133,180

IBH – 77,125,133,181

IBJ – 77,126,133,182

IBK – 77,127,133,183

IBL – 77,131

IBM – 77,132

IBN – 133,134,143,144,154

IBO – 133,179

IBP – 133,184

IBQ - 185,186,187

IBR - 185,190,191

IBS - 185,190,192

IBT - 185,190,193

The species are independent or distinct because the species create divergent paths with features that require additional search and or consideration. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which

the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 77,133,185 generic.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply:

The restriction is done apriori and therefore the exact level of difficulty to search has not yet been established, however, it is clear with over 75 permutations of claims that diverge it is clear that a significant search and consideration burden has been established by the claim structure.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or a grouping of patentably indistinct species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after

the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing them to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

Alexandria, Va. 22313-1450

or faxed to:

**571-273-8300**

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Mark Fadok/

Mark Fadok

Primary Examiner, Art Unit 3625